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No. 09-116

Supreme Court, U.S.
FILED
OCT 30 2009
OFFICE OF THE CLERK

In the

Supreme Court of the United States

VALER V. SECAREA, JR.,
Plaintiff, Appellant and Petitioner

v.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA,
KALYANAM SHIVKUMAR, M.D.,
DAVID CESARIO, M.D.,
CHARLES SWERDLOW, M.D.,
Defendants and Respondents

On Petition for Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Three

PETITION FOR REHEARING AND APPENDIX D

Valer V. Secarea, Jr.
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In Propria Persona

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I. Introduction: false allegations made by Respondent Charles Swerdlow in his Opposition, that materials contained in the Petition for Writ of Certiorari were improperly submitted, constituted a fraud on this court, deprived this Petitioner of a fair and unbiased review of his cause, and calls for granting this petition for rehearing to consider the Petition for Writ of Certiorari on the merits of its subject matter absent any and all doubts as to its legitimacy

On Page 12 of his Opposition[1] Dr. Swedlow states, at section III.C: "Petitioner May Not Rely on Evidence Improperly Submitted to This Court."

Counsel for Dr. Swerdlow's false accusations as to the propriety of the materials in this Petition for Writ of Certiorari has a clear intent: to portray the Petition as produced by an amateur, containing documents that were somehow illegitimate, rendering the Petition illicit and unworthy of serious consideration.

A. Counsel for Dr. Swerdlow was under a duty of truthful disclosure

California Rules of Professional Conduct, Rule 5-200, Trial Conduct,[2] states in relevant part"

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[1] Charles Swerdlow, M.D., Opposition to Petition for Writ of Certiorari (hereinafter, "Opposition").

[2] From the State Bar of California website: http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sImageP

In presenting a matter to a tribunal, a member:

(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law.

As will be demonstrated, counsel for Dr. Swedlow's accusations fall far short of this standard.

B. Issues are "presented" in a state court when they follow local practice

Justice Harlan, in his dissent in *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 at 334 (1968), stated that "it is relevant and usually sufficient to ask whether petitioners satisfied the state rules governing presentation of issues."

Petitioner understands this explanation to say that all matters presented in accordance with state practice are properly before the state court.

Under California practice rules, reviewing courts have much the same power as trial courts to take judicial notice,[3] as well as the power make findings and take evidence.[4]

Consequently, not all issues need be first presented in the trial court. Dr. Swerdlow's proclamations to the contrary simply work as an artifice to deprive this petitioner of his full legal rights.

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ath=Current_Rules.gif&sCategoryPath=/Home/Attorney%20Resources/Rules/Rules%20of%20Professional%20Conduct&sFileType=HTML&sCatHtmlPath=html/RPC_Current-Rules-5-200.html

[3] Appendix D-21: California Evidence Code § 459.

[4] Appendix D-31: California Rules of Court, Rule 8.252.

C. This Petitioner-appellant was entitled to file a Request for Judicial Notice in the California Court of Appeals, under California practice

California Rules of Court, Rule 8.252 (a), permits motions for judicial notice to a reviewing court.[5] The timeliness of this Petitioner-Appellant's motion, in light of recently discovered documents ,[6] as well as its adherence to California statutes and California Rules of Court, was fully explained in the motion.[7]

Note also that there is a quantum difference between the 2007-2008 rule[8] under which this Petitioner filed his motion for judicial notice and the present 2009 rule[9] which requires significantly more from the parties.

D. The rules of this Court provide for inclusion of explanatory materials which are not part of the record

Counsel for Dr. Swerdlow contends that Rule

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[5] Appendix D-31: 2007-2008 California Rules of Court, Rule 8.252, Judicial Notice on Appeal.

[6] Petition Appendix B-338 - B-342.

[7] Petition Appendix B-276 - B-280: "Introduction and Points and Authorities; Appendix D-21: Pertinent California Evidence Code sections and Appendix D-31: 2007-2008 California Rules of Court, Rule 8.252, Judicial Notice on Appeal.

[8] Appendix D-31

[9] Appendix D-35

12(7) limits a party's references to documents in the record.[10] Rule 12, *Review on Certiorari: How Sought; Parties*, states in pertinent part:

> (7) In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court.

This statement does not impose the limitations suggested by counsel for Dr. Swerdlow.

Rather, Rule 14,[11] *Content of a Petition for a Writ of Certiorari*, at section 14.1(i)(vi): provides that a petition appendix may include "any other material the petitioner believes essential to understand the petition."

Dr. Cesario's admissions that he was a student in training at the time of Nadine's procedure,[12] that Nadine Secarea was subjected to a medical device experiment,[13] the experiment ultimately failed,[14] the experiment was not conducted according to the FDA regulations required of all device studies of the kind Nadine was subjected to,[15] the experiment was based on no scientific principle[16] and Dr. Swerdlow all but abandoned Nadine after the injury he caused began to

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[10] Opposition, p. 12.

[11] All references to "Rules" mean Rules of the Supreme Court of the United States.

[12] Appendix B-357.

[13] Appendix B-370.

[14] Appendix B-372, B-373.

[15] Appendix B-369, B-370.

[16] Appendix B-359 - B-363.

take her life,[17] are all essential to understanding and appreciating the gravity of the issues in the Petition.

E. Principles of FRCP 60(b)(3) urge that a decision procured through fraud on this Court be subject to rehearing

Although this Court has established its own rules of conduct,[18] rule 60 of the Federal Rules of Civil Procedure (Relief from Judgment or Order) which articulates the principles of relief from a decision procured by fraud on the court (FRCP 60(b)(3)[19]) serves as a "legal metric" for the relief sought in this rehearing petition, to wit:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . ..

Apparently, only the United States Court of Appeals for the Sixth Circuit has attempted to establish elements of fraud upon the court, which consists of

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[17] Petition, p. 13; Appendix B-394.

[18] However, there does not appear to be a rule to cover the situation which is the subject of this Petition for Rehearing.

[19] See Appendix D-17 for the full text of the rule.

conduct: "1. On the part of an officer of the court; 2. That is directed to the 'judicial machinery' itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court." (*Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir. 1993)).

The Ninth Circuit noted that "one species of fraud upon the court occurs when an 'officer of the court' perpetrates fraud affecting the ability of the court or jury to impartially judge a case." (*Pumphrey v. Thompson Tool Co.*, 62 F.3d 1128, 1130 (9th Cir. 1995))

F. Court clerks are likely to be deceived by false declarations of counsel for respondent Charles Swerdlow, M.D. as to California law and practice

According to the "uscourts" website[20] the law clerks for the Justices of this Court are recent law school graduates. Even so, they evaluate petitions and make recommendations as to whether a case should be accepted.

Given the fact that on average, this Court will receive around 655 petitions per month[21] with at most

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[20] USCOURTS: http://www.uscourts.gov/outreach/topics/hamdan/ procedures.html

[21] Thompson, D.C. and Wachtell, M.F, An Empirical Analysis of Supreme Court Certiorari Petition Procedures: the Call for Response and the Call for the Views of the Solicitor General, *16 Geo.Mason L. Rev.* 237 (2009) at p.253.

36 law clerks to review them (9 justices times 4 clerks per justice[22]) requires each clerk to review just over 18 petitions per month -- if they are evenly distributed, one petition review per law clerk. If multiple clerks review the same petition, the workload is greater.

In this circumstance, this Petitioner can foresee that a clerk is unlikely to recommend a petition for review when authored by a pro-per petitioner, accused of incorporating improper state-specific material, by an experienced officer of this Court. After all who should a law clerk believe: an experienced officer of the court or an untrained party-petitioner?

G. Applying the elements of fraud on the court to the acts complained of calls for granting this petition for rehearing

Using the Sixth Circuit's framework, Dr, Swerdlow's counsel (1) is an officer of this Court (2) made a representation as to the validity of elements of the Petition,[23] (3) that were intentionally false, willfully blind to the truth, or in reckless disregard for the truth[24] (4) was intended to impair the ability of the court to fairly and impartially adjudicate the Petition by casting false doubt as to its validity[25], (5) was a positive averment or concealment of a parties rights under a

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[22] USCOURTS Op. Cit.

[23] Opposition, p. 12.

[24] Sections B, C, and D, above.

[25] Section I: Introduction; Section F, above.

duty to disclose[26] and (6) did subvert the integrity of this Court's proceedings by falsely casting this Petition as illegitimate.[27]

Consequently, the ends of justice would seem to call for granting this petition for rehearing. Counsel for Dr, Swedlow was bound to disclose the truth in her statements of legal principles, not manufacture impropriety where none exists.

H. This Petitioner was unable to locate the relevant materials needed to expose the falsity of the accusations of counsel for Dr. Swerdlow in a timely manner

The conditions which made this petition for rehearing necessary were beyond the control of this Petitioner. Petitioner's Declaration at Appendix D-3 describes the facts which brought about this circumstance. The primary obstacle to a timely reply to Dr. Swedlow's accusations of impropriety was the unavailability of the text of the applicable California Rules of Court as they were at the time of Petitioner's appeal. The Materials were finally located, but with great difficulty and at great personal cost, as the Declaration explains.

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[26] Opposition, p. 12; Section A, above.

[27] Section F, above.

II. This petition for rehearing should be granted not only in the interests of justice to this Petitioner, but in the long overdue interests of the nation

A. The history of human subject experimentation masquerading as treatment is also America's history

Over the history of this nation human subject experimenters appear to have enjoyed a virtual immunity from liability for the infliction of suffering on their unknowing victims. A few examples illustrate the point:

1845-1849: J. Marion Sims, "the father of gynecology" performed experimental surgeries on enslaved women without anesthesia -- even though it was available at the time. One woman endured 30 experimental operations.[28]

1932-1972: U.S. Public Health Service study in Tuskegee, Alabama subjected black sharecroppers to endure untreated syphilis in order to "observe" the progression of the disease. The "study" was continued even after penicillin became widely available. By 1972, only 74 of the original 399 men were alive. Twenty-eight died of syphilis, 100 died of related complications, 40 wives had been infected, and 19 children were born with

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[28] Barron H. Lerner, Scholars Argue Over Legacy of Surgeon Who Was Lionized, Then Vilified (New York Times, F-7, October 28, 2003)

congenital syphilis.[29]

Albert Kligman - "inventor "of Retin-A - was paid by the Dow Chemical Company to test the effects of dioxin on human subjects. In 1966, Kligman said to a reporter - speaking of his access to Holmesburg Pennsylvania prisoners - "All I saw before me were acres of skin.... It was an anthropoid colony... which wasn't going anywhere.... I was like a farmer seeing fertile field for the first time.[30]

Dr. Saul Krugman purposefully infected children with live virus preparations, at Willowbrook State School in New York, during the 1950s and 1960s. He became the chairman of pediatrics at New York University and won the Lasker prize (American equivalent of the Nobel).[31] In 1972, Krugman became the president of the American Pediatric Society.

In the 1950's Chester M. Southam, injected female patients at the Brooklyn Jewish Chronic Disease Hospital with live cancer cells in order to watch their immunological response. Southam was once asked if he would have been willing to inject live cancer cells into

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[29] http://en.wikipedia.org/wiki/Tuskegee_syphilis_experiment

[30] Kaye, J. "Retin-A's Wrinkled Past." Pennsylvania History Review 1997 (Spring).

[31] Rothman, DJ. Strangers at the Bedside A History of How Law & Bioethics Transformed Medical Decision-Making New York: Basic Books, 1992:15.

himself. He replied that such an act would be "false heroism" on his part: "But, let's face it, there are relatively few skilled cancer researchers, and it seemed stupid to take even the little risk." Dr. Southam later became president of the American Association for Cancer Research.[32]

A 1996 Cleveland Plain Dealer investigative series, found: of the "4,154 FDA inspections of researchers testing new drugs [since 1977] . . . more than half the researchers were cited by FDA inspectors for failing to clearly disclose the experimental nature of their work."[33]

B. The Respondent Researchers in this case have admitted to the alleged human subject experimentation on five separate occasions, including one in this court

The first time this Petitioner-plaintiff heard of the experimentation to which wife Nadine Secarea was subjected was when the Respondent Researchers[34] in this case described it to him. This was brought to the California courts' attention in the Second Amended

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[32] http://scientificethics.suite101.com/article.cfm/cancer_in_a_handbag

[33] Drug Trials: Do People Know the Truth About Experiments, *Cleveland Plain Dealer*, December 15 to 18, 1996.

[34] As in previous briefs, the Respondent Researchers are: Kalyanam Shivkumar,M.D., David Cesario, M.D., and Charles Swerdlow, M.D.

Complaint and the declaration of this Petitioner-plaintiff in his opposition to Respondent Researchers' summary judgment motions.[35]

The second time was in an exchange of emails. This also was placed before the California courts in the opposition to Respondent Researchers' summary judgment motions.[36]

The third instance was in the publication of their experiment. That publication was placed before the California courts in this Petitioner-plaintiff's opposition to Respondent Researchers' summary judgment motions.[37]

The fourth admission came during the deposition of Dr. Cesario during the pendency of the appeal on the summary judgment which is at issue in this Petition. Excerpts from the deposition were included in the petition for rehearing in the California Court of Appeals and in the petition for review in the California Supreme Court -- as well as in this Petition

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[35] Appendix B-79 - B-99 (SAC §§155-202: The Experimental Form of the Ablation Procedure Revealed); B-212 - B-217, (Valer's Declaration, ¶¶46-62).

[36] B-233 - B-241 (October 2004 email correspondence between Valer and Dr. Swerdlow ("Valer's Email") re: esophageal temperature sensing performed on Nadine

[37] Appendix B-99 - B-102 (SAC §§203-211; Publication of "Less Than Entirely True" Research Results); Petition Appendix B-243 (Cesario D, Shivkumar K, Valderrabano M, Wiener I, Swerdlow C. Esophageal temperature monitoring during left atrial catheter ablation for atrial fibrillation. J Am Coll Cardiol 2005; 45 Suppl A:114A.) See also, Appendix B-247 (Conte J, ACC 2005 Annual Session Highlights, J Am Coll of Cardiol Vol. 45, No. 11, Suppl B, June 7, 2005:30B-2B)

for Writ of Certiorari. Its purpose was to show that the matters complained of actually happened and to provide a metric against which the issues under appeal might be measured.

The fifth admission is before this court. On page 5 of the his Opposition, Dr. Swerdlow states "The study established that ..." But, nowhere does Dr. Swerdlow describe that he had obtained IRB approval, patients informed consent, or an FDA IDE to engage in this medical device research enterprise.

C. With three admissions of experimentation before the California Courts, the grant of summary judgment to Respondent Researchers is a mystery

The questions of due process complained of in this Petition cry out for this court's attention. As the exemplars throughout this Petition show, medical and human subject experimentation is not a practice of medicine. And, this fact raises a question as to whether fairness and justice is possible when it is treated as such -- both as to the appearance of fairness and justice, as well as its reality. But, the "mystery" as to how Respondent Researchers could admit to the matters complained of in this cause and still be granted summary judgements, is no mystery after all-- it is plain error. (See *Vachon v. New Hampshire*, 414 U.S. 478 (1974); *Wood v. Georgia*, 450 U.S. 261, 265, n. 5 (1981)).

III. Conclusion: Petitioners in this Court should be entitled to a decision-making process that preserves both the appearance and reality of fairness

In many contexts, this Court has observed that the appearance of justice is as important as its reality . (cf. *In re Murchison*, 349 U.S. 133, 136 (1955)).["Our system of law has always endeavored to prevent even the probability of unfairness."]; *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J., concurring) ["The appearance of even-handed justice . . . is at the core of due process"]).

As stated at the outset, counsel for Dr. Swerdlow's false accusations as to the propriety of the materials in this Petition for Writ of Certiorari has a clear intent: to portray the Petition as produced by an amateur and containing documents that were inserted illicitly, casting doubt on the Petition's integrity and legitimacy. Counsel for Dr. Swerdlow created a situation that became so difficult that it effectively prevented this Petitioner from fully presenting his cause.

According to this Petitioner's reading, this result is the essence of the kind of interference with the judicial process that rises to the level of a fraud on the court, entitling the victimized party to relief.

And, the relief this Petitioner asks for is to have his Petition considered on the merits of its subject matter with the stipulation that nothing about it is improper, in any way.

Dated: 29 October 2009

Respectfully submitted,

/s

Valer V. Secarea, Jr.
Petitioner, Appellant and Plaintiff
In Propria Persona

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Certification

Pursuant to Rule 44 of the Rules of the Supreme Court of the United States, I hereby certify that the instant petition for rehearing is presented in good faith and not for delay -- but in light of recently learned details about the process of petition review, to vindicate a right to have my Petition for Writ of Certiorari considered on the merits of its subject matter -- a right that was very likely lost because of the false accusations of impropriety in its make-up by counsel for Respondent Researcher, Charles Swerdlow, M.D.

/s

Valer V. Secarea, Jr.
Petitioner, Appellant and Plaintiff
In Propria Persona

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APPENDIX D

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Declaration of Petitioner
Valer V. Secarea, Jr.
in Support of Petition for Rehearing

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Declaration

I, Valer Secarea, Jr., am the Petitioner in this case and the facts I relate are from my personal research, knowledge and experience.

In his Opposition brief, at page 12, respondent Charles Swerdlow accused this Petitioner of including improper materials in the Petition for Writ of Certiorari, implying thereby that the Petition was somehow illegitimate, and unworthy of consideration. In particular, Dr. Swerdlow contended that the Motion and Request for Judicial Notice found at Appendix B-251 - B-342, was improperly incorporated and not part of the record before the California courts.

In order to show that this statements was false, I sought to transcribe, into Appendix C of the Reply brief, the text of the rule of California practice, California Rules of Court, Rule 8.252(a), that permitted the motion in question to be filed in the California Court of Appeals as it was.

However, when I located the text of this rule on the California court's website, I found that Rule 8.252, "Judicial notice; findings and evidence on appeal," had been revised, effective January 2009. The 2009 rule[38] is more restrictive than the 2007-2008 rule[39] under which the motion in this cause was filed.

I searched the resources available to me for the text of the "old rule" without success. I believed I had kept a personal copy, but was unable to locate it.

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[38] Appendix D-35.

[39] Appendix D-31.

Without a copy of this text, I would be unable to demonstrate the falsity of Dr. Swerdlow's contentions.

During this time I was researching and writing the Reply brief, an intervening circumstance hindered the effort -- earning a living. I work as an engineering consultant, mainly in the military-aerospace sector of the economy. I work on a contract basis, so no contract - no work. In the current economic conditions, I feel fortunate to have any work at all.[1] From 6 September 2009 to 24 September 2009, I was required to support the engineering development efforts on the project on which I am currently engaged, continuously, every day, no days off, no week-ends off, no holidays. After 19 days of this non-stop effort, working on the Reply brief only in "bits and pieces," I finally took a few days to make a concerted effort at finding the missing court rules document and complete the Reply. By this time I wondered if the Reply brief had become a futile effort. Unbelievably, after almost three weeks of nearly non-stop effort, and even though I informed project management that I had an urgent personal task to attend to, I was nearly terminated for taking a day or two to attend to this matter.

The text of the 2007-2008 version of the California Rules of Court was finally located on an Iomega removable drive media "Zip disk." The text was quickly transcribed from the document in which it was contained and into the reply brief.

This task consumed so much time that I do not

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[1] See Appendix D-11: New York Times article: California Joblessness Reaches 70-Year High

believe the Reply arrived at this Court in time to negate the harm caused by counsel for Dr. Sweredlow's fabricated accusations. I believe the now provably false assertions made by counsel for Dr. Swerdlow had all but disqualified the Petition in the minds of reviewers, to wit: an experienced member of this Court's bar had made representations that a pro-per party-petitioner was attempting to foist upon the court an illicit document. And, who should reviewing law clerks believe, a knowledgeable member of their bar -- or an untrained party-litigant who couldn't even timely reply to the accusations of wrong-doing against him.

Counsel for Dr. Swedlow was under a duty to disclose the truth by virtue of the California State Bar Rules of Professional Conduct 5-200 (B), which requires that members "Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law." This Petitioner asserts that counsel for Dr. Swerdlow violated this canon of conduct and created a situation that became so difficult that it effectively prevented this Petitioner from fully presenting his cause.

Under penalty of perjury, the foregoing is true and correct to the best of my knowledge and belief.

Executed on 29 October 2009,
Dove Canyon, California

/s _____

Valer V. Secarea, Jr.
Petitioner, Appellant and Plaintiff
In Propria Persona

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New York Times Article:
California Joblessness Reaches 70-Year High

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New York Times Article Transcription

California Joblessness Reaches 70-Year High

By JENNIFER STEINHAUER
Published: September 18, 2009

LOS ANGELES — California's unemployment rate in August hit its highest point in nearly 70 years, starkly underscoring how the nation's incipient economic recovery continues to elude millions of Americans looking for work.

Numbers Soar

California's unemployment rate has reached the highest point since 1940.

Note. California statistics before 1976 are not official.

Source: Bureau of Labor Statistics

THE NEW YORK TIMES

While job losses continue to fall, the state's new unemployment rate — 12.2 percent, according to the Bureau of Labor Statistics — is far above the national average of 9.7 percent and places California, the nation's most-populous state, fourth behind Michigan, Nevada and Rhode Island. Statistics kept by the state show California's unemployment rate was 14.7 percent in 1940, said Kevin Callori, a spokesman for the

California Employment Development Department.While California has convulsed under the same blows as the rest of the country over the last two years, its exposure to both the foreclosure crisis and the slowdown in construction — an industry that has fueled growth in much of the state over the last decade — has been outsized.

Total building levels in California have fallen to $23 billion this year from $63 billion in 2005; home building this year is less than a quarter of what it was in 2005, according to the Center for Continuing Study of the California Economy. Roughly 500,000 of the state's job losses have been in construction, finance, real estate and industries related to construction.

"We were at the epicenter of the housing bubble, and we are at the epicenter of the fallout," said Stephen Levy, senior economist and director of the center. "The reason we are doing worse in California than other states is construction."

While California has enjoyed some signs of a comeback in recent months, unemployment, which is often the last economic indicator to turn around in a protracted recession, is expected to remain high for the near future. For example, a recent study by the University of California, Los Angeles, predicted that while the state would enjoy 2 percent quarterly growth in 2010, the unemployment rate would remain above 10 percent.

Such numbers have caused deep pain to a state overly

reliant on personal income taxes to balance its budget. The near collapse of the stock market, which greatly reduced personal wealth in the state, and job losses related to the housing bust combined to sharply reduce that source of revenue.

In July, Gov. Arnold Schwarzenegger signed a budget that closed a roughly $24 billion two-year gap with extensive cuts to social services, parks and education. This has left the state with large numbers of people without jobs seeking government services, which further strained its resources and hindered potential consumer spending among laid off and furloughed government workers.

The governor seized on California's grim unemployment milestone Friday to make a case for his current pet projects: revising the state's tax system, fixing its broken water system, which has contributed to unemployment in the state's farm regions, and tapping the federal government for all he can get.

"The latest unemployment numbers reinforce the importance of combining federal, state and local efforts to put Californians back to work and to help all those struggling in this difficult economy," Mr. Schwarzenegger said. "Immediately addressing our challenges, which include reforming the state's antiquated tax structure and updating our water delivery system will move the state forward and build a stronger, more diverse economy. While I am pleased to see fewer jobs lost, my administration will not rest until

job growth resumes and employment returns to normal."

Earlier this week, Ben S. Bernanke, the Federal Reserve chairman, proclaimed that the country was emerging from its protracted recession, and doubtlessly, California is showing its own signs of recovery. In Southern California, the center of the housing bust, home sales rose 11 percent in August from a year earlier, and prices have begun to tick up as well. In addition, the state's exports are once again growing as international economics, particularly in Asia, have begun to recover and create demand for goods, and layoffs have slowed statewide.

"Any economist would tell you we're in a recovery," Mr. Levy said. "Job losses are lessening, the G.D.P. is rising, the housing market is stabilizing, and have you looked at the stock market lately? But the unemployment rate is the thing families care about. They don't care about G.D.P. or China coming back; they care about jobs."

Federal Rules of Civil Procedure 60: Relief from Judgment or Order

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FRCP Rule 60: Relief from Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing.

A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality.

The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief.

This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. Â§ 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished.

The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

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California Evidence Code
§§ 451, 452, 453, 454, 455, 459
(Judicial Notice)

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California Evidence Code § 451

Judicial notice shall be taken of the following:

(a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution.

(b) Any matter made a subject of judicial notice by Section 11343.6, 11344.6, or 18576 of the Government Code or by Section 1507 of Title 44 of the United States Code.

(c) Rules of professional conduct for members of the bar adopted pursuant to Section 6076 of the Business and Professions Code and rules of practice and procedure for the courts of this state adopted by the Judicial Council.

(d) Rules of pleading, practice, and procedure prescribed by the United States Supreme Court, such as the Rules of the United States Supreme Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Admiralty Rules, the Rules of the Court of Claims, the Rules of the Customs Court, and the General Orders and Forms in Bankruptcy.

(e) The true signification of all English words and phrases and of all legal expressions.

(f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be

the subject of dispute.

California Evidence Code § 452

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

California Evidence Code § 453

The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

(a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

(b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

California Evidence Code § 454

(a)In determining the propriety of taking judicial notice of a matter, or the tenor thereof:

(1) Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by a party.

(2) Exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.

(b) Where the subject of judicial notice is the law of an organization of nations, a foreign nation, or a public entity in a foreign nation and the court resorts to the advice of persons learned in the subject matter, such advice, if not received in open court, shall be in writing.

California Evidence Code § 455

With respect to any matter specified in Section 452 or in subdivision (f) of Section 451 that is of substantial consequence to the determination of the action:

(a)If the trial court has been requested to take or has taken or proposes to take judicial notice of such matter, the court shall afford each party reasonable opportunity, before the jury is instructed or before the cause is submitted for decision by the court, to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.

(b)If the trial court resorts to any source of information not received in open court, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action and the court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

California Evidence Code § 459

(a) The reviewing court shall take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was required to notice under Section 451 or 453. The reviewing court may take judicial notice of any matter specified in Section 452. The reviewing court may take judicial notice of a matter in a tenor different from that noticed by the trial court.

(b) In determining the propriety of taking judicial notice of a matter, or the tenor thereof, the reviewing court has the same power as the trial court under Section 454.

(c) When taking judicial notice under this section of a matter specified in Section 452 or in subdivision (f) of Section 451 that is of substantial consequence to the determination of the action, the reviewing court shall comply with the provisions of subdivision (a) of Section 455 if the matter was not theretofore judicially noticed in the action.

(d) In determining the propriety of taking judicial notice of a matter specified in Section 452 or in subdivision (f) of Section 451 that is of substantial consequence to the determination of the action, or the tenor thereof, if the reviewing court resorts to any source of information not received in open court or not included in the record of the action, including the advice of persons learned in the subject matter, the reviewing court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

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2007-2008 California Rules of Court Rule 8.252:

(a) Judicial Notice

(b) Findings on Appeal

(c) Evidence on Appeal

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2007-2008 California Rules of Court

Rule 8.252 (a). Judicial notice on appeal.

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

(c) Evidence on appeal

(1) A party may move that the reviewing court take evidence.

(2) An order granting the motion must:

(A) State the issues on which evidence will be taken;

(B) Specify whether the court, a justice, or a special master or referee will take the evidence; and

(C) Give notice of the time and place for taking the evidence.

(3) For documentary evidence, a party may offer the original, a certified copy, or a photocopy. The court may admit the document in evidence without a hearing.

2009 California Rules of Court Rule 8.252:

(a) Judicial Notice

(b) Findings on Appeal

(c) Evidence on Appeal

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2009 California Rules of Court

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) The motion must state:

(A) Why the matter to be noticed is relevant to the appeal;

(B)Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and

(C)Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(3) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

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